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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GEORGE A. SABA, Plaintiff and Appellant, v. CRAIG R. LAREAU et al., Defendants and Respondents.	E070635 (Super.Ct.No. CIVDS1800912) OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez, Judge. Affirmed.

George A. Saba, in pro. per., and for Plaintiff and Appellant.

Law Offices of James R. Rogers and Keith E. Zwillinger for Defendant and Respondent, Craig R. Lareau.

Callahan, Thompson, Sherman & Caudill and Christopher J. Zopatti, for Defendant and Respondent, Stella Panos.

Office of General Counsel, The State Bar of California, Vanessa L. Holton, Robert G. Retana, and Sean T. Strauss for Defendant and Respondent, Michaela F. Carpio.

Appellant George Saba is a 74-year-old veteran and attorney who was diagnosed with Alzheimer's type dementia in 2011. In December 2017, after an independent medical evaluation and evidentiary hearing, the State Bar of California enrolled him as an inactive member based on its determination he was unable to competently perform his duties as an attorney "because of mental infirmity or illness." (Bus. & Prof. Code, § 6007, subd. (b)(3) (section 6007).)

Saba filed a civil lawsuit for damages against the State Bar prosecutor who handled his case (Michaela Carpio), the psychologist appointed as his medical examiner (Dr. Craig Lareau), and a neuropsychologist who provided consultation to the medical examiner (Dr. Stella Panos). Saba alleged these defendants conspired to deprive him of his law license by improperly extending the duration of his medical examination, requesting irrelevant medical records, falsely diagnosing him, and not revealing before the hearing that Dr. Lareau had consulted with Dr. Panos. His complaint asserts 11 causes of action (including breach of contract, fraud, intentional infliction of emotional distress, false imprisonment, and conspiracy) and seeks $2 million in economic and emotional damages as well as punitive damages.

The trial court dismissed the complaint in the early stages of litigation. It sustained the State Bar prosecutor's demurrer without leave to amend on the ground the prosecutorial discretion immunity in Government Code section 821.6 barred the six causes of action against her. In addition, the court granted the doctors' anti-SLAPP

motions, concluding their alleged conduct constituted protected petitioning activity and is shielded from civil liability under the litigation privilege codified in Civil Code section 47. (Code Civ. Proc., § 425.16, unlabeled statutory citations refer to this code.)[1] Saba appeals these rulings, but we find no error and will therefore affirm.

I

FACTS

A. *The State Bar Competency Proceeding*

The State Bar is a public corporation that acts as the "administrative arm of [the California Supreme Court] . . . in matters of admission and discipline of attorneys." (*In re Rose* (2000) 22 Cal.4th 430, 438; Cal. Const., art. VI, § 9.) In that capacity, the State Bar established the State Bar Court to conduct regulatory and disciplinary proceedings and provide recommendations to the California Supreme Court, which holds the exclusive authority to disbar, suspend, or place attorneys on inactive status. (See Cal. Rules of Court, rule 9.12; *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 598.) The Hearing Department functions as the State Bar Court's trial division and the Office of Chief Trial Counsel ("OCTC") as the prosecutor. (See Bus. & Prof. Code, §§ 6079.1, 6079.5, 6086.5, 6086.65.)

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[1] "SLAPP" is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1 (*Equilon*).) "A SLAPP . . . seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055 (*Rusheen*).)

Section 6007 provides in relevant part, "The State Bar Court shall . . . enroll a licensee of the State Bar as an inactive licensee in each of the following cases: [¶] . . . [¶] . . . After notice and opportunity to be heard before the State Bar Court, the State Bar Court finds that the licensee, because of *mental infirmity* or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public." (§ 6007, subd. (b)(3), italics added.)

Saba was admitted to the California Bar in 1988. In December 2014 and April 2015, OCTC issued two separate notices of disciplinary charges against Saba, asserting various ethical violations, such as filing frivolous cases, and failing to pay and report sanctions. The State Bar Court abated those matters to await their resolution in a pending civil case. In January 2017, while those cases remained abated, the OCTC issued two additional notices of disciplinary charges against Saba. The first alleged similar but additional acts of misconduct, including failure to pay sanctions totaling over $50,000. The State Bar Court consolidated this case with the abated cases. The second notice sought an order to show cause why Saba should not be placed on inactive enrollment under section 6007 based on the OCTC's discovery that the Veterans Administration (VA) had diagnosed him with Alzheimer's type dementia in 2011 and he had been receiving treatment for his condition since late 2015. Saba was appointed counsel and Carpio, an attorney at the OCTC, was assigned to prosecute the matter.

In early 2017, the State Bar Court found probable cause to hear the section 6007 mental competency case and effectively stayed the other three, abated cases until its resolution. The State Bar Court issued an order requiring Saba to submit to an independent medical examination to assess whether a mental infirmity precluded him from competently performing his duties as an attorney. The order appointed Dr. Lareau to conduct the section 6007 examination and draft a report, at the State Bar's expense. The order prohibited the examination from lasting longer than four hours "without further authorization of the court."

Saba completed the medical examination with Dr. Lareau and signed the authorization allowing disclosure of his medical records relating to his psychological and psychiatric history. Dr. Lareau filed a 16-page report in which he concluded Saba was "unable to practice law without substantial threat of harm to the interests of his clients or the public" due to "substantial neurocognitive deficits," including poor memory function and difficulty learning and assimilating new information.

The hearing took place on December 1, 2017, and Dr. Lareau testified. The OCTC submitted Dr. Lareau's report and the results of the tests he administered on Saba, as well as portions of Saba's medical record. Saba submitted written comments objecting to Dr. Lareau's evaluation and conclusions. Although Saba was represented at the hearing, the State Bar Court allowed him to also act as counsel and cross-examine Dr. Lareau. In a written statement of decision, the State Bar Court concurred with Dr. Lareau's opinion, which it found was supported by clear and convincing evidence. The

court noted Dr. Lareau's opinion was based on a six and a half-hour interview with Saba, extensive functional testing, and review of Saba's medical records, which revealed he had been complaining to his medical providers of forgetfulness since 2011.

The court noted that it particularly agreed with the following passage in Dr. Lareau's report: "On a humanistic note, it is important to remember that the neurocognitive difficulties Mr. Saba is experiencing are beyond his control to change. It must be frustrating for him to have his professional identity as a lawyer challenged by the current process. He knows he has had memory difficulties for several years, and he states he has been trying to complete his current cases for an extended time. He realizes that his cognitive difficulties would likely get worse over time. Unfortunately, he has difficulty recognizing how significant his cognitive deficits have become, in part because he does not want it to be true. To accept that this is now his reality will thrust him unwillingly into another stage of life, where he can no longer be the same provider he has been over the last 30 years. It may be a difficult transition for him to make from a psychological perspective."

The court concluded: "From all indications, [Saba] is a very intelligent man and he has been a good and aggressive advocate for his clients for the bulk of his many years of practice. Sadly, because of mental infirmities and through no fault of his own, [Saba's] abilities and reliability as an attorney have gradually eroded to the point where he is no longer able to practice law without substantial threat of harm to the interests of his clients and the public. Accordingly and with considerable sadness, this court finds

that an order pursuant to section 6007(b)(3) is both appropriate and necessary." The court placed him on inactive status on December 29, 2017.

B. *Saba's Lawsuit*

The following month, Saba, acting as his own attorney, filed a verified complaint for damages against Carpio, Dr. Lareau, and Dr. Panos. His complaint asserts causes of action for breach of contract, negligence, violation of medical ethics, violation of legal ethics, fraud, negligent misrepresentation, false imprisonment, intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, conspiracy, and violation of the right to privacy. Saba asserted all 11 causes of action against Dr. Lareau, six against Carpio, and four against Dr. Panos.[2]

His claims against Carpio, his prosecutor, were based on allegations she (i) disobeyed the court's order and conspired with Dr. Lareau to exceed the hourly limit for his psychological examination, (ii) solicited from the VA additional medical records that were irrelevant to his Alzheimer's diagnosis, (iii) conspired with the State Bar to appoint a psychologist instead of a neuropsychologist, and (iv) concealed from him Dr. Panos's involvement in his medical evaluation.

He alleged Dr. Lareau (i) was biased in favor of the State Bar and always sided with them in competency proceedings; (ii) made misrepresentations about his expertise,

[2] The claims against Carpio are: violation of legal ethics, false imprisonment, intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, conspiracy, and violation of his right to privacy. The claims against Dr. Panos are: ethics violations, intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, and conspiracy.

as well as how he would conduct the examination and draft the report; (iii) improperly extended the examination from four to six and a half-hours, refused to let Saba bring his oxygen tank or take any breaks during the examination, and let the temperature in his office reach a stifling 100 degrees; (iv) solicited from the VA additional medical records that were irrelevant to Saba's Alzheimer's diagnosis; (v) recklessly misdiagnosed Saba and prepared a false report; (vi) concealed the fact he consulted with a neuropsychologist (Dr. Panos) on the testing; and (vii) gave false testimony at the section 6007 hearing. He alleged Dr. Panos drafted "at least 25% of [his neuropsychological] test results" and did not testify at his hearing. He alleged the two doctors are close friends and conspired to conceal Dr. Panos's involvement in his medical examination and shield her from testifying at his hearing.

C. *The Demurrer and Anti-SLAPP Motions*

Carpio filed a demurrer arguing, among other things, that the prosecutorial discretion immunity in Government Code section 821.6 barred Saba's claims against her. Dr. Lareau and Dr. Panos each filed a motion to strike Saba's complaint as a SLAPP. They argued his allegations against them arose out of their work on his medical examination for the State Bar fitness proceedings, which is "conduct in furtherance of the exercise of the constitutional right of petition," protected under Code of Civil Procedure section 425.16, subdivision (e)(4).

In his declaration, Dr. Lareau, a licensed psychologist and attorney, said he was appointed by the State Bar Court to conduct an independent medical examination of Saba for the section 6007 mental competency proceedings. He said both parties agreed before his appointment that he would be permitted to "consult a neuropsychologist with respect to testing aspects of the evaluation process." He attached a copy of Saba's medical records he had received from the VA and said, contrary to Saba's allegation, all of the records related to Saba's "Alzheimer's diagnosis and/or his cognitive functioning." He denied Saba's allegations about the examination conditions. He attached the order from the State Bar Court extending the examination time from four to six hours. He said at the conclusion of six hours, he told Saba he had the right to terminate the examination, but Saba elected to complete the examination, which took an additional 30 minutes. He also said Saba took three restroom breaks and did not elect to take the more extensive breaks or the lunch break he was offered. Dr. Lareau said the temperature in his office had remained at approximately 75 degrees throughout the examination. Dr. Lareau said he consulted with Dr. Panos, a specialist in neuropsychology, regarding "scoring and interpretation" of the tests he had administered to Saba. He said he testified at the section 6007 hearing, where both Saba and Saba's attorney cross-examined him on his opinion that Saba's cognitive deficits rendered him mentally unfit to continue practicing law.

In her declaration, Dr. Panos, a licensed neuropsychologist, said she had agreed to assist Dr. Lareau in interpreting Saba's neuropsychological tests. She said she was familiar with Dr. Lareau's forensic psychological work and believed he was competent to

administer the tests. She said she never met Saba nor had any agreement with him; she simply received his raw test data from Dr. Lareau and discussed scoring and interpreting the data with Dr. Lareau. Both doctors said in their declarations they bore no ill will toward Saba and evaluated him objectively.

The only evidence Saba submitted in opposition to the anti-SLAPP motions was a declaration in which he reiterated the substance of the allegations in his verified complaint.

The trial court sustained the demurrer without leave to amend and granted the anti-SLAPP motions. About a month later, Saba filed another complaint for damages with similar allegations, this time naming as defendants not only Carpio, Dr. Lareau, and Dr. Panos, but also the State Bar, Carpio's supervisor, and his own attorney. That case is the subject of a separate appeal (E071166), which we will decide in a separate opinion. Shortly after Saba initiated that new case, he filed a notice of appeal challenging the court's rulings on the demurrer and anti-SLAPP motions in this case.

II

ANALYSIS

A. *Carpio's Demurrer*

The trial court sustained Carpio's demurrer on the ground the prosecutorial discretion immunity barred Saba's claims against her. Saba claims that ruling was erroneous, arguing the immunity does not apply because Carpio's alleged actions "were not reasonably related" to his section 6007 hearing. We disagree.

A demurrer is appropriate where the complaint "does not state facts sufficient to constitute a cause of action." (§ 430.10, subd. (e).) "The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law," which means we review the trial court's ruling de novo. (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.'" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The prosecutorial discretion immunity shields a public employee from liability for injury caused by their "instituting or prosecuting" any "judicial or administrative proceeding" within the scope of their employment, even if they acted "maliciously and without probable cause." (Gov. Code, § 821.6.) "Under California law the immunity statute is given an 'expansive interpretation' in order to best further the rationale of the immunity, that is, to allow the free exercise of the prosecutor's discretion and protect public officers from harassment in the performance of their duties." (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1292.)

Rosenthal v. Vogt (1991) 229 Cal.App.3d 69 is instructive. In that case, the plaintiff asserted several tort claims (including negligence and intentional infliction of emotional distress) against a State Bar attorney based on allegations the attorney wrote and distributed a memo within the State Bar "to advance a plan to deprive plaintiff of his license without due process." (*Id.* at p. 74.) The appellate court upheld the trial court's

ruling sustaining the attorney's demurrer without leave to amend, concluding Government Code section 821.6 "unalterably precluded" the claims because they arose from the State Bar attorney's conduct in connection with instituting a judicial proceeding against the plaintiff, conduct that fell within the scope of his employment. (*Rosenthal*, at p. 75.)

This case is like *Rosenthal*. As noted, Saba's claims against Carpio are based on allegations she (i) conspired with the State Bar to appoint a psychologist instead of a neuropsychologist and (ii) conspired with Dr. Lareau to exceed the medical examination's hourly limit, request irrelevant medical records, and conceal Dr. Panos's involvement. All of this conduct directly relates to Carpio's role in prosecuting the section 6007 proceedings. Saba's assertion that her alleged misdeeds were "ultra vires" does not make them so. To the contrary, all the improper acts he claims Carpio committed were in preparation for his mental competency hearing. As an OCTC attorney, it is her job to prepare for and prosecute such proceedings. We therefore conclude the trial court correctly determined the immunity applied to bar the causes of action against Carpio.

B. *The Doctors' Anti-SLAPP Motions*

1. *Statutory framework and standard of review*

California's anti-SLAPP statute authorizes a court to strike a cause of action arising from a defendant's free speech or petitioning activities unless the plaintiff shows a probability of prevailing on the merits. (§ 425.16, subd. (b)(1).) To resolve the merits of

a section 425.16 special motion to strike, the court undertakes "a two-part analysis, concentrating initially on whether the challenged cause of action arises from protected activity within the meaning of the statute and, if it does, proceeding secondly to whether the plaintiff can establish a probability of prevailing on the merits." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699.) The defendant has the burden on the first issue; the plaintiff on the second. (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1536 (*Kolar*).) The trial court "considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based,'" and we do the same in our independent review of the trial court's ruling. (*Equilon*, *supra*, 29 Cal.4th at p. 67; *Freeman v. Schack* (2007) 154 Cal.App.4th 719, 727.)

Saba claims the court erred in both parts of the analysis. We take each in turn.

2. *Arising from protected activity*

Saba argues none of his claims against Dr. Lareau and Dr. Panos arise out of protected speech or conduct. We disagree.

Section 425.16 protects a wide range of speech and petitioning conduct, including any "statement or writing made before a . . . judicial proceeding" and "any other conduct in furtherance of the exercise of the constitutional right of petition." (§ 425.16, subd. (e)(1), (4).) "The anti-SLAPP protection for petitioning activities applies not only to the filing of lawsuits, but extends to conduct that relates to such litigation, including statements made in connection with *or in preparation of litigation*." (*Kolar*, *supra*, 145

Cal.App.4th at p. 1537, italics added.) "[A] party's litigation-related activities constitute 'act[s] in furtherance of a person's right of petition or free speech,'" and "courts have adopted 'a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16.'" (*Ibid*., quoting *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908.) A claim *arises from* litigation-related activities if those activities """form[] the basis for""" the cause of action. (*Equilon*, *supra*, 29 Cal.4th at p. 66.)

Here, the doctors' work in preparation for the section 6007 hearing form the basis of each of Saba's claims against them. The State Bar Court appointed Dr. Lareau as the independent medical examiner and ordered him to examine Saba and provide an opinion on his mental competency. The parties agreed Dr. Lareau could consult with a neuropsychologist to score and interpret the test results. Saba takes issue with how Dr. Lareau carried out the State Bar Court's order. He claims Dr. Lareau misrepresented his qualifications, misdiagnosed him, and provided a false report and false testimony. He also takes issue with Dr. Lareau's consultation of Dr. Panos, claiming the two conspired against him to cover up her involvement in his medical examination. In short, Saba alleges the doctors committed various torts and misdeeds when preparing Dr. Lareau's opinion on his mental competence for the section 6007 hearing. Such claims arise from the very essence of litigation-related activities.

Citing *Jordan-Benel v. Universal City Studios, Inc.* (9th Cir. 2017) 859 F.3d 1184 (*Jordan-Benel*), Saba argues his breach of contract claim (which is against Dr. Lareau only) is not based on protected activity. *Jordan-Benel* has no application here. In that

case, the plaintiff claimed the defendants stole his screenplay and turned it into a popular film series without giving him credit or compensation for the idea. (*Id.* at pp. 1186-1187.) The Ninth Circuit rejected the defendants' argument that the plaintiff's breach of an implied-in-fact contract claim was based on their filmmaking activity (which would be an exercise of free speech). Instead, the court concluded the gravamen of the plaintiff's contract claim was the defendants' failure to compensate him for the ideas in his screenplay. (*Id.* at pp. 1191-1193.) The court held the anti-SLAPP statute did not apply to the claim because refusing to pay for services is not a protected form of free speech. (*Jordan-Benel*, at pp. 1191-1193.)

Saba attempts to compare his case to *Jordan-Benel* by arguing the State Bar Court's order appointing Dr. Lareau as his medical examiner constitutes a contract between them, which Dr. Lareau breached by misrepresenting his qualifications, improperly conducting the examination, and preparing a false report. But the mere fact Saba asserted a breach of contract claim is an insufficient basis of comparison. Unlike the claim in *Jordan-Benel*, the gravamen of Saba's claim does not involve issues of compensation, it involves the manner in which Dr. Lareau reached his opinion and submitted it to the State Bar Court. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92-93 ["The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning"].) We conclude the

trial court correctly determined the doctors carried their threshold burdens of demonstrating the claims against them arose from protected activity.[3]

3. *Probability of prevailing on the merits*

To survive anti-SLAPP scrutiny, a plaintiff must demonstrate their cause of action has "minimal merit." (*Navellier v. Sletten*, *supra*, 29 Cal.4th at p. 89.) Applying a "summary-judgment-like" test (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714), we accept as true the admissible evidence favorable to the plaintiff, and evaluate the defendants' evidence only to determine whether it defeats the plaintiff's showing as a matter of law. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The plaintiff must produce admissible evidence to support the claims, they may not simply rely on the allegations in their complaint, even if verified, to make the evidentiary showing. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 656 [to constitute admissible evidence, the allegations in a verified complaint must fall "within the personal knowledge of the verifier"].) "The motion to strike is properly granted if, as a matter of law, the properly pleaded facts do not support a claim for relief." (*Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 721.)

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[3] In the trial court, Saba argued, based on the holding in *Flatley v. Mauro* (2006) 39 Cal.4th 299, that the anti-SLAPP statute does not apply to his claims against Dr. Lareau because his conduct was illegal. Saba does not renew this argument on appeal, but if he did we would reject it. For *Flatley's* holding to apply, "the evidence [must] conclusively establish[]" Dr. Lareau engaged in criminal activity. In *Flatley*, that evidence came in the form of a letter the defendant attorney had sent the plaintiff, the content of which constituted criminal extortion as a matter of law. (*Id.* at pp. 316, 320.) In contrast, there is no evidence of criminal activity in this case, only Saba's allegation Dr. Lareau conspired with Carpio and Dr. Panos to deprive him of his law license.

Saba argues the trial court failed to decide this prong of the anti-SLAPP analysis and we should either remand the matter to the trial court or decide the issue ourselves. In fact, the transcript from the hearing on Dr. Lareau's motion demonstrates the court decided the second part of the anti-SLAPP analysis by concluding the litigation privilege in Civil Code section 47 barred Saba's claims as a matter of law. But even if the court had not reached that conclusion, we would reach it in our independent review.

The litigation privilege "applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege, or more apt, immunity, applies to all communications with "some relation" to judicial or quasi-judicial proceedings, rendering the communications "'absolutely immune from tort liability.'" (*Rusheen, supra,* 37 Cal.4th at p. 1050.) The privilege "is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards." (*Id*. at p. 1057; *Silberg*, at p. 212 [privilege applies "even though the publication is made outside the courtroom and no function of the court or its officers is involved"]; see also *Spitler v. Children's Institute International* (1992) 11 Cal.App.4th 432, 438 [child care professional's alleged statements to journalist in preparation of her testimony at the preliminary hearing are shielded].) Immunity "is accorded . . . to witnesses, even where their testimony is allegedly perjured and malicious." (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 641.) "[T]he privilege is not restricted to the actual

parties to the lawsuit but need merely be connected or related to the proceedings," in other words, there must be "some reasonable connection between the act claimed to be privileged and the legitimate objects of the lawsuit in which that act took place." (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.)

The litigation privilege is relevant to prong two of the anti-SLAPP analysis because it "present[s] a substantial defense a plaintiff must overcome to demonstrate a probability of prevailing." (*Flatley*, *supra*, 39 Cal.4th at p. 323; see also *Kashian v. Harriman*, *supra*, 98 Cal.App.4th at pp. 926-927 [plaintiff failed to satisfy prong two because litigation privilege barred his defamation action]; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 783-785 [same].) There is significant overlap between conduct protected under section 425.16, subdivision (e) and conduct to which the litigation privilege applies. (See *Flatley*, at p. 323 [noting that courts look to the litigation privilege as an aid to determining whether conduct is protected by the anti-SLAPP statute]. Both statutes "protect the right of litigants to 'the utmost freedom of access to the courts without the fear of being harassed subsequently by derivative tort actions.'" (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.) "Any doubt as to whether the privilege applies is resolved in favor of applying it." (*Adams v. Superior Court*, *supra*, 2 Cal.App.4th at p. 529.)

In *Gootee v. Lightner* (1990) 224 Cal.App.3d 587, the plaintiff sued the psychologist who had performed an independent evaluation in a custody dispute between the plaintiff and his ex-wife, alleging the psychologist had negligently administered and

interpreted the tests and destroyed certain raw test data. (*Id.* at pp. 589-590.) The appellate court affirmed a summary judgment ruling in favor of the psychologist on the ground the litigation privilege barred plaintiff's claim. "It is undisputed [the psychologist's] role was a limited one: to evaluate the partisans in the custody matter for purposes of testifying concerning the custody dispute." (*Id.* at p. 591.) The court concluded the gravamen of the plaintiff's claim was allegedly tortious conduct "committed . . . in connection with the testimonial function," which fell squarely under the litigation privilege. (*Id.* at pp. 591-596.)

Similarly here, Saba seeks to impose liability on Dr. Lareau and Dr. Panos for their participation in his mental competency proceedings. He claims Dr. Lareau recklessly evaluated him and provided false opinions and testimony at his competency hearing. He also claims the doctors improperly concealed Dr. Panos's limited role as a consultant. The litigation privilege shields the doctors from liability based on allegations related to the performance of their work on his case, and for good reason. Our laws should foster and promote medical professionals' participation in State Bar competency proceedings. We therefore conclude the trial court properly determined Saba's claims against the doctors fail as a matter of law by reason of the litigation privilege.[4]

[4] On appeal, Saba does not discuss the applicability of the litigation privilege in any meaningful way. Instead, he raises arguments about why each individual claim in his complaint has merit. However, because we conclude the litigation privilege bars all of his claims, we need not address his claim-specific arguments.

III

DISPOSITION

We affirm the judgment. The parties shall bear their own costs on appeal.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.